

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Criminal Petition No.1277 of 2019

ORDER:

This Criminal Petition, under Section 482 of the Code of Criminal Procedure, 1973, is filed by the petitioners/accused, seeking to quash the docket order, dated 31.05.2018, passed in C.C.No.125 of 2018 (Old C.C.No.37 of 2017 on the file of XXII Special Magistrate Court, Hyderabad) by the XXIII Special Magistrate, Hyderabad, whereby, the cross-examination of P.W.1 was recorded as Nil.

2. Heard both sides. Perused the record.

3. It is contended on behalf of the petitioners/accused that when the matter was posted before the Court below on 31.05.2018, the counsel for the petitioners/accused was busy in some other Court. He could not reach the Court on time. Therefore, P.W.1 was not cross-examined and ultimately prayed to give an opportunity to cross-examine P.W.1 by allowing this petition.

4. On the other hand, the learned counsel for the 2nd respondent/de-facto complainant would contend that there is no truth in the submissions made on behalf of the petitioners/accused and ultimately prayed to dismiss the application.

5. It is pertinent to state that the petitioners/accused are being prosecuted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. It is borne by the record that

P.W.1 was not at all cross-examined. To find out the truth or otherwise of the allegations levelled against the petitioners/accused, cross-examination of P.W.1 is essential. It is brought to the notice of this Court that the case is posted on 22.04.2019 before the Court below. In view of the facts and circumstances of the case, this Court deems it appropriate to afford one opportunity to the petitioners/accused to cross-examine P.W.1 on some conditions.

6. In the result, the Criminal Petition is allowed by setting aside the docket order, dated 31.05.2018, passed in C.C.No.125 of 2018 (Old C.C.No.37 of 2017 on the file of XXII Special Magistrate Court, Hyderabad) by the XXIII Special Magistrate, Hyderabad, is set aside. The Court below shall allow the petitioners/accused to cross-examine P.W.1, on 22.04.2019, before lunch recess, subject to the condition of the petitioners/accused paying costs of Rs.1,000/- (Rupees one thousand only) directly to P.W.1 before commencement of cross-examination. If the petitioners/accused fail to conduct cross-examination of P.W.1 as indicated above, their right to cross-examine P.W.1 stands forfeited.

Miscellaneous petitions, if any, pending in this Criminal Petition, shall stand closed.

Dr. SHAMEEM AKTHER, J

10th April, 2019

Note:

Furnish C.C. by 12.04.2019

(B/O)

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